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COMPARISON OF ENVIRONMENTAL LAW ENFORCEMENT WITH THE CONCEPT OF HUMAN RIGHTS AND CRIMINAL LAW

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ABSTRACT

There are at least four dimensions that can affect the quality of environmental law enforcement, namely the existence of real environmental laws, violators of the law themselves, victims (society), and law enforcement officers, where the four dimensions are mutually influential and take place in a single political, social, economic, and cultural structure in certain circumstances. Environmental problems are complex and interesting problems to study in depth, this is what attracts the author to conduct research on criminal policies that exist in efforts to enforce environmental law in Indonesia. The type of legal research that the author uses in compiling this legal writing is the normative juridical research type. In the context of environmental management based on the Law on Environmental Protection and Management, environmental law enforcement can be carried out in two ways, namely preventively and repressively. Preventive environmental law enforcement is carried out through supervision, while repressive law enforcement is carried out through the application of sanctions. Supervision and the application of sanctions are aimed at achieving community compliance with environmental legal norms.

Keywords: *environmental law, Human Rights, Criminal Law*

1. INTRODUCTION

A good and healthy environment is a basic right of every Indonesian citizen as mandated in Article 28 H of the 1945 Constitution of the Republic of Indonesia (Baikhaki, 2017). Increasing global warming results in climate change, thus exacerbating the decline in environmental quality, therefore environmental protection and management are needed. Law Number 4 of 1982 concerning Basic Provisions for

Environmental Management (hereinafter referred to as UUPP-LH) is the initial step in policy for enforcing environmental law. UUPPLH contains the principles of environmental management that serve to provide direction for the national environmental law system, and after 15 years, this law was finally revoked because it was considered less appropriate to realize sustainable development as envisioned, namely with the Law on Environmental Management Law Number 23 of 1997 and replaced again by Law Number 32 of 2009 on the grounds that it would better guarantee legal certainty and provide protection for the rights of every person to obtain a good and healthy environment, through the imposition of quite severe criminal sanctions in Law Number 32 of 2009 (Saleh, 2004).

The old UUPPLH placed criminal law enforcement in environmental law enforcement only as ultimum remidium, so that the content of the enforcement of criminal sanctions was not dominant (Siahaan, 2004). The principle of ultimum remedium in the explanation of the old UUPPLH turned out to be very unclear and unclear. The general explanation is actually an effort to clarify the meaning of the considerations of a law. The considerations contain the philosophical values of a law. Thus, in reality, the general explanation is an effort by the legislator to emphasize the philosophical values contained in a consideration. The philosophical values in the considerations of a law are concretized in the body in the form of articles of the law. The weakness of the concept of the principle of subsidiarity in the formulation of the old law resulted in the elimination of the principle of subsidiarity (Rambe & Sagala, 2023). In the UUPPLH, the principle of subsidiarity is replaced by the principle of ultimum remedium, which is limited to certain formal crimes, namely violations of wastewater quality standards, emissions, and disturbances only. The rest of the formal crimes of criminal law function as premum remedium. There are at least four dimensions that can affect the quality of environmental law enforcement, namely the existence of real environmental laws, violators of the law themselves, victims (society), and law enforcement officers, where these four dimensions are mutually influential and take place in a single political, social, economic, and cultural structure in certain circumstances. Basically, the definition of criminalization in a regulation is very important. This has been included in environmental law enforcement laws with the existence of criminal provisions included in the law on environmental management (Budiati & Sikumbang, 2014). Law Number 32 of 2009 concerning Environmental Management (UUPLH) has included its criminal provisions in Chapter XV, which consists of 23 articles, starting from Article 97 to Article 120 of UUPLH. These criminal provisions are much more complete and detailed when compared to the old Law Number 23 of 1997 concerning Environmental Management.

Environmental problems are complex and interesting problems to study in depth, this is what attracts the author to conduct research on criminal policies that exist in efforts to enforce environmental law in Indonesia. The author's starting point in this study is an in-depth study of Law Number 32 of 2009 regarding the criminal provisions in Law Number 32 of 2009 concerning Environmental Management which is currently in effect (Ius Constitutum) (Barakati, 2016).

2. RESEARCH METHODE

The type of legal research that the author uses in compiling this legal writing is the type of normative legal research. Normative Legal Research is a research whose main focus in its study is based on positive legal rules or norms, normative legal research, with a literature study approach, this research is based on the analysis of legal norms, both law in the sense of statutory regulations, Thus the object analyzed is the norm or principles of positive law (Soerjono, 2010). The point is that research on legal principles using research to identify a problem (problem Identification) alone and research by providing solutions to problems. So, the determining element is the purpose of the legal research, and additional or supporting elements as outlined above.

3. RESULT AND ANALYSIS

1. the concept of human rights in realizing environmental law

Environmental law has developed rapidly, not only in relation to the function of law as protection, control and certainty for society but even more prominently as a means of development. Environmental law concerns the determination of values, namely values that are currently in effect and values that are expected to be enforced in the future and can be called "laws that regulate the order of the environment (Erwin, 2008). Environmental law is a law that regulates the reciprocal relationship between humans and other living things which if violated can be subject to sanctions (Iskandar, 2011).

Environmental legal norms that are oriented towards the use of environmental resources and supported by an orientation towards economic growth have been proven to have caused various damages to the environment itself. In this case, environmental law views the environment as an object of development (Manik, 2018). According to S.T. Munadjat Danusaputro distinguishes between modern Environmental Law that is oriented towards the environment and Classical Environmental Law that is oriented towards the use of the environment. Modern Environmental Law establishes provisions and norms to regulate human actions with the aim of protecting its sustainability so that it can be continuously used by future generations.

The orientation of modern Environmental Law on the environment shows the nature and character of the environment itself. With this orientation, Environmental Law has a complete and comprehensive nature, always in dynamics with its flexible nature and character. In relation to the above, N.H.T. Siahaan stated that there are several important things to know, namely first, environmental law is the basis and guideline for all environmental management. All aspects regulated by environmental law are in order to achieve environmental sustainability for human welfare. Second, the power of management is in the hands of the state. Third, regulating environmental interactions and human-to-human interactions. Fourth, harmony as the principle of environmental management. Fifth, based on sustainability.

In the context of environmental management based on the Law on Environmental Protection and Management, environmental law enforcement can be carried out in two ways, namely preventively and repressively. Preventive environmental law enforcement is carried out through supervision, while repressive law enforcement is carried out through the application of sanctions. Supervision and the application of sanctions are aimed at achieving community compliance with environmental legal norms.

The concept of environmental management supervision policy in the context of the Environmental Protection and Management Law needs to be regulated comprehensively, which includes self-supervision by reporting the results to the relevant agencies, and is open to the public; primary supervision by inspectors from the licensing agency; secondary supervision from provincial or (central) government agencies if the first agency fails to carry out its supervisory function.

Other supervision is external supervision or public supervision. Thus, to realize environmental management based on sustainable development, an open and as wide a public supervision concept is needed, especially implementing an objection mechanism if the licensing procedure and public input are ignored by the permit issuing agency. Of course, to make supervision effective, an appropriate punishment strategy is needed, starting from the implementation of the lightest sanctions (warnings one, two, and three) to revocation of the permit. This sanctioning strategy is needed to avoid sanctions based on arbitrariness. In terms of supervision, Articles 22-24 of the 1997 Environmental Management Law, from a legal normative perspective, it does not reflect a comprehensive supervision concept, considering that supervision carried out by the Ministry of Environment as regulated in Article 22 does not apply to all types of environmental permits (Primharyadi, 2017).

Supervision inherent in the Ministry of Environment is limited to waste disposal permits into environmental media. This is because the institutional status of the Ministry of Environment as a non-departmental Ministry of State is an institutional obstacle in carrying out environmental supervision. Supervision as regulated in Article 22 cannot be realized by the Ministry of Environment including in the regions because of organizational obstacles of the Ministry of Environment in addition to the fact that integrated institutional regulations have not been issued. When compared with Article 71 paragraph (1), (2), (3) Article 72, Article 73, Article 74 paragraph (1), (2), (3), (4) of the 2009 Environmental Protection and Management Law, supervision attached to the Ministry of Environment is carried out on all permits related to environmental management, and is not limited to organizational obstacles where at all levels of government (Ministers, Governors, Regents/Mayors) are required to supervise all forms of environmental permits where the regulation of these permits is specifically regulated in PP No. 27 of 2012.

Thus, supervision that is carried out properly, prioritizing integration between lines will prevent violations of environmental administrative law norms. The concept of supervision, if carried out properly, can prevent environmental pollution caused by violations. The existence of society in environmental management supervision is a substantial aspect in supporting development and the environment.

Development and the environment can be integrated in the context of environmental management if society can play an active role, both in the decision-making process and after decision-making. In theoretical-practical terms, the role of society in environmental management supervision can be classified into the following forms:

a. In terms of administrative procedures, for example in the preparation of Amdal, licensing procedures and planning, making regulations. In making regulations, for example, the community has the right to participate in the preparation of administrative laws and regulations.
b. Providing information to the community. In the context of information, the community has the right to receive adequate information on a decision-making process, especially parties who are candidates related to the impact of decision-making, for example in granting permits, Amdal.

Based on the description above, the existence of the community in environmental management supervision has two forms of roles, namely: the community is not only a decision, which acts as a mere recipient object from above passively (top-down), but the community as a subject in a more active and dynamic form. The activeness and dynamism of the community is reflected not only from the source of information, but has a bargaining position to democratize decision-making.

Thus, all interests that refer to the rights to life should get sufficient and fair space in all their interaction networks, including in decision-making. The theoretical concept above is related to the concept of sustainable development, so that the concept should be included in the provisions of the Environmental Protection and Management Law, considering that in the context of the Environmental Protection and Management Law, the rights and roles of the community in environmental management have not been regulated comprehensively. In addition, the concept of community participation is intended as part of a central effort to harmonize development interests with the environment. Regulations related to community rights in environmental management in the Environmental Protection and Management Law do not all regulate community rights in detail. If stated in general, such rights in the Environmental Protection and Management Law are:

1. Right to a Good and Healthy Environment Article 65 paragraph (1)
2. Right to participate in the environment (Article 70)
3. Right to receive/have Information (Article 62 Paragraph 2);
4. Right to have equal and broadest opportunities (Article 65 Paragraph 4).

If observed carefully, related to the right to a good and healthy environment, it has also been stated in Article 28 of the Human Rights Charter (HAM) as part of the MPR RI Decree Number XVII / MPR / 1998 concerning HAM which states: "That everyone has the right to a good and healthy environment" (Noor, 2006). Then Law No. Article 9 Paragraph (3) of Law No. 39 of 1999 concerning Human Rights affirms: "everyone has the right to a good and healthy environment" (the same as the provisions in the UUPPLH). Furthermore, on August 18, 2000, the second amendment to the 1945 Constitution formulated the rights referred to in Article 28 H Paragraph 1 (Patra, 2008). Environmental law has developed rapidly, not only in relation to the function of law as protection, control and certainty for society but even more prominently as a means of development.

Environmental law concerns the determination of values, namely values that are currently in effect and values that are expected to be implemented in the future and can be called "laws that regulate environmental order." Environmental law is a law that regulates the reciprocal relationship between humans and other living things which if violated can be subject to sanctions. Environmental legal norms that are oriented towards the use of environmental resources and supported by an orientation towards economic growth have been proven to have caused various damages to the environment itself. In this case, environmental law views the environment as an object of development. According to S.T. Munadjat Danusaputro distinguishes between modern Environmental Law that is oriented towards the environment and Classical Environmental Law that is oriented towards the use of the environment. Modern Environmental Law establishes provisions and norms to regulate human actions with the aim of protecting its sustainability so that it can be continuously used by future generations. The orientation of modern Environmental Law towards the environment shows the nature and character of the environment itself. With this orientation, Environmental Law has a complete and comprehensive nature, always in dynamics with its flexible nature and character.

In relation to the above, N.H.T. Siahaan stated that there are several important things to know, namely first, environmental law is the basis and guideline for all environmental management. All aspects regulated by environmental law are to achieve environmental sustainability for human welfare. Second, management power is in the hands of the state. Third, regulating environmental interactions and human-to-human interactions. Fourth, harmony as the principle of environmental management. Fifth, based on sustainability. In the context of environmental management based on the Environmental Protection and Management Law, environmental law enforcement can be carried out in two ways, namely preventively and repressively.

Preventive environmental law enforcement is carried out through supervision, while repressive law enforcement is carried out through the application of sanctions. Supervision and application of these sanctions are aimed at achieving community compliance with environmental law norms (Hamzah, 2005). The concept of environmental management supervision policy in the context of the Environmental Protection and Management Law needs to be regulated comprehensively, including self-supervision by reporting the results to the relevant agencies, and is open to the public; primary supervision by inspectors from the licensing agency; second supervision from provincial or government agencies (central) if the first agency fails to carry out its supervisory function. Other supervision is external supervision or public supervision. Thus, to realize environmental management based on sustainable development, an open and as wide a concept of public supervision is needed, especially implementing an objection mechanism if the licensing procedure and public input are ignored by the permit issuing agency. Of course, to make supervision effective, an appropriate punishment strategy is needed, starting from the implementation of the lightest sanctions (warnings one, two, and three) to revocation of the permit. This sanctioning strategy is needed to avoid sanctions based on arbitrariness. In terms of supervision, Articles 22-24 of the 1997 Environmental Management Law, from a legal normative perspective, do not reflect a comprehensive supervision concept, considering that supervision carried out by the Ministry of Environment as regulated in Article 22 does not apply to all types of environmental permits. Supervision inherent in the Ministry of Environment is limited to waste disposal permits into environmental media. This occurs because the institutional status of the Ministry of Environment as a non-departmental Ministry of State is an institutional obstacle in carrying out environmental supervision.

Supervision as regulated in Article 22 cannot be realized by the Ministry of Environment including in the regions due to organizational obstacles of the Ministry of Environment in addition to the fact that integrated institutional arrangements have not been issued. When compared with Article 71 paragraph (1), (2), (3) Article 72, Article 73, Article 74 paragraph (1), (2), (3), (4) of the 2009 Environmental Management Law, supervision attached to the Ministry of Environment is implemented on all permits related to Environmental Management, and is not limited to organizational obstacles where at all levels of Government (Ministers, Governors, Regents/Mayors) are required to supervise all forms of environmental permits where the regulation of these permits is specifically regulated in PP No. 27 of 2012.

It seems that the substance of the Environmental Protection and Management Law is also not yet able to become an alternative for integrated supervision. The existence of regulations in Chapter XII shows that the latest law wants integrated cooperation at every level of government. In the author's opinion, the regulations regarding supervision are not felt to show the existence of the role of the Ministry of Environment because authorized officials can delegate their authority to carry out supervision. The word delegation indicates that the authority that has been delegated to the delegans is their responsibility, not the responsibility of the gelegator. Environmental management in realizing sustainable development will be

successful if it implements the concept of integrated supervision carried out by the Minister of Environment and Spatial Planning, Governors; Regents/Mayors at the regional level.
This concept of integrated supervision, both supervision that is self-supervision and public supervision, the results of which can be known to the public openly. Thus, supervision that is carried out properly, prioritizing integration between lines will prevent violations of environmental administrative law norms. If the concept of supervision is carried out properly, environmental pollution caused by violations can be avoided. The existence of the community in environmental management supervision is an aspect of substance, in supporting development and the environment.
Development and the environment can be integrated in the context of environmental management if the community can play an active role, both in the decision-making process and after the decision is made. In theoretical-practical terms, the role of the community in environmental management supervision can be classified into the following forms:

a. In terms of administrative procedures, for example in the preparation of Amdal, licensing procedures and planning, making regulations. In making regulations, for example, the community has the right to participate in the preparation of administrative laws and regulations.
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Based on the description above, the existence of the community in environmental management supervision has two forms of roles, namely: the community is not only a decision, which plays a role as a mere recipient object from above passively (top-down), but the community as a subject in a more active and dynamic form. The activeness and dynamism of the community are reflected not only from the source of information, but have a bargaining position to democratize decision-making. Thus, all interests that refer to the rights to life should receive sufficient and fair space in all networks of interaction, including in decision-making.

The theoretical concept above is related to the concept of sustainable development, so that the concept should be included in the provisions of the Environmental Protection and Management Law, considering that in the context of the Environmental Protection and Management Law, the rights and participation of the community in environmental management have not been comprehensively regulated. In addition, the concept of community participation is intended as part of a central effort to harmonize development interests with the environment. Regulations related to community rights in environmental management in the Environmental Protection and Management Law do not all regulate community rights in detail. If stated in general, such rights in the Environmental Protection and Management Law are: (a). Right to a good and healthy environment Article 65 paragraph (1); (b). Right to participate in the environment (Article 70); (c). Right to receive/have information (Article 62 paragraph 2); (d). The right to equal and broadest opportunities (Article 65 Paragraph 4).

If we observe carefully, the right to a good and healthy environment has also been stated in Article 28 of the Human Rights Charter (HAM) as part of the MPR RI Decree Number XVII / MPR / 1998 concerning HAM which states: "That everyone has the right to a good and healthy environment" (Rambe et al, 2024). Then Law No. 39 of 1999 concerning HAM was issued, Article 9 Paragraph (3) confirms: "everyone has the right to a good and healthy

environment" (the same as the provisions in the UUPPLH). Furthermore, on August 18, 2000, the second amendment to the 1945 Constitution

2. Criminal Law Enforcement in Terms of Environmental Law

Enforcement of criminal environmental law is none other than the enforcement of criminal provisions of environmental law (Suwari, 2016). The substance, institutional authority, and procedures used are generally subject to the provisions of environmental law unless they have not been specifically regulated. In such cases, the provisions that apply in criminal law in general are used, for example regarding judicial institutions, personnel, and applicable procedural law (Rambe et al, 2024).

Criminal provisions in the field of environmental law are generally regulated in Articles 94-120 of the 2009 UUPPLH. In addition, environmental criminal provisions are also regulated in sectoral laws and regulations, such as the Law on Conservation of Biological Natural Resources and their Ecosystems (Law No. 5 of 1990), Law No. 10 of 1997 concerning Nuclear Energy, Law No. 41 of 1999 in conjunction with Law No. 19 of 2004 concerning Forestry, Law No. 22 of 2001 concerning Oil and Gas, Law No. 27 of 2003 concerning Geothermal, Law No. 7 of 2004 concerning Water Resources, Law No. 31 of 2004 in conjunction with Law No. 45 of 2009 concerning Fisheries, and other laws.

The legal acts in question are violations of the provisions stipulated in the PPLH law. There are at least 6 provisions that can be punished if the provisions are violated by interested parties. The provisions in question are:

1. Provisions on quality standards;
2. Provisions on genetic engineering;
3. Provisions on Waste;
4. Provisions on Land;
5. Provisions on Environmental Permits;
6. Provisions on Environmental Information

4. CONCLUSION

There are several comparisons of criminal law in current environmental law enforcement. First, the 2009 UUPLH recognizes perpetrators of criminal acts other than humans, namely legal entities or associations, foundations, or other organizations, while according to the Criminal Code, the perpetrators are only individuals; second, in addition to using principal criminal sanctions and additional criminal sanctions as in the Criminal Code, UUPLH also uses disciplinary measures in maintaining its norms; third, the vague formulation of punishment with the use of the word "and/or", allows judges to choose between imposing cumulative or alternative sanctions; and fourth, UUPLH views criminal law as a last resort (ultimum remedium) for certain formal crimes, while for other crimes the principle of premum remedium applies (prioritizing the implementation of criminal law enforcement) (Rambe & Sihombing, 2024). Several criminal law policies in future environmental law enforcement that need to be implemented are as follows. First, the pattern of the future environmental criminalization approach is deterrence approach or commonly called the law enforcement approach or stick a proach. This approach is most widely used in environmental law enforcement policies; second, the proof effort is

directed at formal crimes where the proof only looks at the behavioral elements that can be seen with the five senses, for example acts of pollution or destruction of the environment; and third, the punishment is directed at cumulative sanctions, meaning that the judge can impose all the provisions of the punishment in the environmental law, either combined in their entirety or combined only 2 (two) or 3 (three) and so on (Sodikin, 2010).

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